

File NR S2-30172
WR Doc ID 4173217

State of Washington
REPORT OF EXAMINATION
FOR WATER RIGHT APPLICATION

PRIORITY DATE
1/16/2004

WATER RIGHT NUMBER
S2-30172

MAILING ADDRESS
ICON MATERIALS
700 FIFTH AVE STE 5600
SEATTLE WA 98104

SITE ADDRESS (IF DIFFERENT)
4040 Kersey Way
Auburn, WA 98092

Quantity Authorized for Withdrawal or Diversion

WITHDRAWAL OR DIVERSION RATE
1000

UNITS
GPM

ANNUAL QUANTITY (AF/YR)
128

Purpose

PURPOSE	WITHDRAWAL OR DIVERSION RATE			ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE	UNITS	ADDITIVE	NON-ADDITIVE	
Mining	1000	128	GPM			01/01 - 12/31

REMARKS

This surface water right will be used in conjunction with ground water right G1-27575 and reservoir water right R2-30218. Total annual quantity of all three water rights is not to exceed 128 acre-feet per year.

ADDITIVE	IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
	NON-ADDITIVE		WATER SYSTEM ID	CONNECTIONS
0	0			

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA				
KING	Pond #4 on ICON Materials Property		10-PUYALLUP-WHITE				

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Pond #4 on ICON Materials Property			21N	05E	32			

REPORT OF EXAMINATION

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)

282105-9010, 282105-9026, 282105-9028

292105-9019, 292105-9020, 292105-9021, 292105-9022, 292105-9025, 292105-9044, 292105-9046, 292105-9053

322105-9001, 322105-9002, 322105-9003, 322105-9004, 322105-9005, 322105-9006, 322105-9008, 322105-9024, 322105-9026, 322105-9031, and

332105-9050

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

ICON Materials Gravel Mine

That portion of Sections 29, 32 and 33, and that portion of the Southwest $\frac{1}{4}$ of Section 28, Township 21 North, Range 5 East WM, lying Southerly of the Stuck River Road, Easterly of the Easterly margin of Kersey Way and Northwesterly of the Southeasterly line of the Covington-Chehalis transmission line, together with that portion of the Northeast $\frac{1}{4}$ of Section 32, Township 21 North, Range 5 East WM, lying Southeasterly of the Covington-Chehalis transmission line, excepting there from the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 28, Township 21 North, Range 5 East WM, all in King County, Washington.

Proposed Works

This surface water right is to utilize surface water on the property contained in an existing reservoir. Water will be diverted via pump and used on-site for gravel washing, dust control, truck wheel rinsing and other related uses. This surface water right is to be used in concert with Groundwater Right G1-27575, which specifies as follows:

ICON Materials proposes to secure a groundwater right to withdraw water from the confined Q(A)c aquifer using an existing well. The well was drilled on the ICON Materials property on January 25, 1993 to a total depth of 239 feet from a site elevation of approximately 180 feet above mean sea level (MSL). The 10-inch diameter well is screened from 219 to 239 feet below ground surface (bgs) into the water bearing Q(A)c zone.

A groundwater right was requested to withdraw groundwater at a maximum instantaneous rate (Qi) of up to 400 gallons per minute (gpm) for mining purposes, including washing sand and gravel extracted from the ICON Materials aggregate mine and for dust control. The applicant has proposed to provide 69-73 acre-feet per year of return flow to the shallow aquifer system via on site percolation from various gravel washing and equipment washing activities and eventual infiltration.

Additional Mitigation:

In addition, ICON Materials has purchased Water Right Certificate 2926, owned by Sumner Business Park. Certificate 2926 was an irrigation water right, located in the SW ¼ NE ¼ Section 12, Township 20N, Range 4E WM. This water right had a Qi of 0.80 cfs to be diverted from the White River during April 15th to October 1st for irrigation purposes.

The transferable quantity for ICON's purposes for the Sumner Business Park water right is 52 acre-feet/year. Water Right Certificate 2926 has been placed into trust.

A second form of mitigation for this water right application is the commitment to fund \$100,000 towards the Clearwater Restoration Project, which is a restoration project located in the upper reaches of the White River. The funding will be dedicated towards the construction of several large woody debris structures in the upper parts of the White River drainage, in the Clearwater River drainage vicinity.

A final condition of this water right is that this water right will stay in permit status throughout the operation of the mine until the mine ceases operation by December 31, 2028. At that point this permit will be cancelled.

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Project has begun	April 30, 2014	April 30, 2016

Additional Actions and Due Dates

ACTION	DATE DUE
Mitigation Status Report Due	December 31, 2012

[A combined mitigation report for Permits G1-27575, S2-30172 and R2-30218 is shall be submitted to Ecology by the due date listed above.]

Measurement of Water Use

How often must water use be measured?	Weekly
How often must water use data be reported to Ecology?	Annually (Jan 31)
What volume should be reported?	Total Annual Volume
What rate should be reported?	Annual Peak Rate of Withdrawal (gpm or cfs)

Provisions**Measurements, Monitoring, Metering and Reporting**

An approved measuring device shall be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173.

Recorded water use data shall be submitted via the Internet. To set up an Internet reporting account, contact the Southwest Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Southwest Regional Office for forms to submit your water use data.

WAC 173-173 describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

Findings of Facts

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. [Enter Application Number], subject to existing rights and the provisions specified above.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

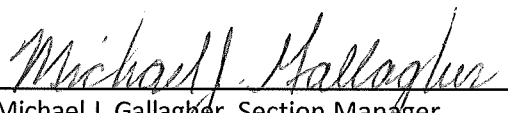
To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel RD SW Ste 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

Signed at Olympia, Washington, this 9th day of May 2012.


Michael J. Gallagher, Section Manager

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>.
To find laws and agency rules visit the Washington State Legislature Website:
<http://www1.leg.wa.gov/CodeReviser>.

INVESTIGATOR'S REPORT
Application for Water Right -- ICON Materials
Water Right Control Number S2-30172
Mike Gallagher, Department of Ecology

BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number S2-30172.

Table 1 Summary of Requested Water Right

Applicant Name:	ICON Materials and CPM Development Corporation
Date of Application:	1/16/2004
Place of Use	ICON Materials gravel mine

County	Waterbody	Tributary To	WRIA
King	Pond #4		10-Puyallup-White

Purpose	Rate	Unit	Acre-feet/yr	Begin Season	End Season
Mining	2.2	CFS	128	01/01	12/31

Source Name	Parcel	Well Tag	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Pond #4			21N	05E	32	NE		

Legal Requirements for Approval of Appropriation of Water

Public Notice

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. **Notice of this application was published in the King County Journal on Thursday, February 5, 2004 and Thursday, February 12, 2004.**

Consultation with the Department of Fish and Wildlife

The Department must give notice to the Department of Fish and Wildlife of applications to divert, withdraw or store water. Ecology has consulted with the Washington State Department of Fish and Wildlife on this application.

State Environmental Policy Act (SEPA)

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.

- (a) It is a surface water right application for more than 1 cubic foot per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
- (b) It is a groundwater right application for more than 2,250 gallons per minute;
- (c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- (d) It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
- (e) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

INVESTIGATION

Proposed Use and Basis of Water Demand

On January 16, 2004, ICON Materials filed an application (S2-30172) for a permit to appropriate public water for gravel mining related activities including gravel washing and processing and dust control, and for irrigation of 863 acres.

More specifically, located on the ICON Materials gravel mine property is a 22.67 acre stormwater retention and sediment settlement pond. ICON proposes to utilize up to 128 acre-feet/year (in conjunction with groundwater permit G1-27575) for the purposes of sand and gravel processing, production of asphalt and concrete, and washing of heavy equipment.

Existing stormwater at the ICON Materials gravel mine is regulated by the Department of Ecology's Water Quality Program through the Sand and Gravel General NPDES Permit. ICON Materials maintains a Stormwater Pollution Prevention Plan (SWPPP) and the gravel mine facility is divided into basins for the purposes of describing the operation and management of stormwater in compliance with the SWPPP and the Sand and Gravel NPDES Permit.

However, through a series of ponds, pipes and pumps, onsite stormwater is stored, infiltrated and recycled for the beneficial use purposes of sand and gravel processing, production of asphalt and concrete and other mining related activities.

This ROE is a result of settlement negotiations to resolve a previous appeal of application G1-27575.

Other Rights Appurtenant to the Place of Use

The ICON Materials gravel mine has one groundwater permit (G1-27575) and one reservoir permit (R2-30218). Along with this application (S2- 30172), the period of use for all three permits is until December 31, 2028.

Groundwater permit application G1-27575 is for a for a water right permit to appropriate public groundwater from a 239 foot deep ten-inch diameter well for mining purposes at an instantaneous withdrawal (Qi) rate of 400 gallons per minute (gpm). The combined annual quantity (Qa) for both groundwater permit application G1-27575 and surface water application S2- 30172 is 128 afy.

Impairment Considerations

Impairment is an adverse impact on the physical availability of water for a beneficial use that is entitled to protection. A water right application may not be approved if it would:

- Interrupt or interfere with the availability of water to an adequately constructed groundwater withdrawal facility of an existing right. An adequately constructed groundwater withdrawal facility is one that (a) is constructed in compliance with well construction requirements and (b) fully penetrates the saturated zone of an aquifer or withdraws water from a reasonable and feasible pumping lift.
- Interrupt or interfere with the availability of water at the authorized point of diversion of a surface water right. A surface water right conditioned with instream flows may be impaired if a proposed use or change would cause the flow of the stream to fall to or below the instream flow more frequently or for a longer duration than was previously the case.
- Interrupt or interfere with the flow of water allocated by rule, water rights, or court decree to instream flows.
- Degrade the water quality of the source to the point that the water is unsuitable for beneficial use by existing users (e.g., via sea water intrusion).

This application will not reduce the water available to other appropriative water rights.

Water Availability

For water to be available for appropriation, it must be both physically and legally available.

Physical Availability

For water to be physically available for appropriation there must be ground or surface water present in quantities and quality and on a sufficiently frequent basis to provide a reasonably reliable source for the requested beneficial use or uses. In addition, the following factors are considered:

- Volume of water represented by senior water rights, including federal or tribal reserved rights or claims;
- Water right claims registered under Chapter 90.14 RCW;
- Ground water uses established in accordance with Chapter 90.44 RCW, including those that are exempt from the requirement to obtain a permit; and

- Potential riparian water rights, including non-diversionary stock water.
- Lack of data indicating water usage can also be a consideration in determining water availability, if the department cannot ascertain the extent to which existing rights are consistently utilized and cannot affirmatively find that water is available for further appropriation.

Legal Availability

To determine whether water to be legally available for appropriation, the following factors are considered:

- Regional water management plans – which may specifically close certain water bodies to further appropriation.
- Existing rights – which may already appropriate physically available water.
- Fisheries and other instream uses (e.g., recreation and navigation). Instream needs, including instream and base flows set by regulation. Water is not available for out of stream uses where further reducing the flow level of surface water would be detrimental to existing fishery resources.
- The Department may deny an application for a new appropriation in a drainage where adjudicated rights exceed the average low flow supply, even if the prior rights are not presently being exercised. Water would not become available for appropriation until existing rights are relinquished for non-use by state proceedings.

Based on the volume requested and the proposed mitigation plan, we conclude that water is available at the requested Qi of 400 GPM and Qa of 128 AFY in Application G1-27575 since any effects on surface water flows are offset by a combination of on-site infiltration and return flow, and mitigation as proposed in this ROE.

Beneficial Use

The proposed use of water is for mining purposes. The ICON Materials gravel mine needs to use water for gravel washing, dust control, equipment washing and other gravel mining related purposes.

The use of water for mining purposes is defined in statute as a beneficial use (RCW 90.54.020(1)).

Public Interest Considerations

Consideration of Protests and Comments

No protests were filed against this application.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for a water right be approved in the amounts and within the limitations listed below and subject to the provisions listed above.

Purpose of Use and Authorized Quantities

The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

2.2 cfs

128 acre-feet per year

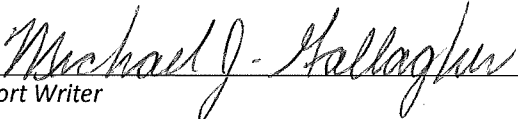

Mining

Point of Diversion

NE¼, Section 32, Township 21North, Range 5 E W.M. (The outlet of Pond #4)

Place of Use

As described on Page 1 of this Report of
Examination.

	
Report Writer	Date

If you need this publication in an alternate format, please call Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

Selected References

Golder Associates, Inc. February 19, 2006. ICON Materials Water Right Application – Assessment of Technical Issues and Water Budget Evaluation.

Pacific Groundwater Group. October 1999. 1999 Hydrogeologic Characterization Report – City of Auburn.

Robinson, Noble and Saltbush. October 17, 2003. Hydrogeological Characterization of ICON Materials Auburn Pit, PCHB Appeal Nos. 03-070 and 03-071.

Robinson, Noble and Saltbush. October 30, 2003. Preliminary Evaluation of Recharge Enhancement at ICON Materials Mine Site (Task 2), PCHB Appeal Nos. 03-070 and 03-071. Letter to Thomas Pors dated October 30, 2003

Robinson, Noble and Saltbush. August 9, 2005. Response to the 11 Issues Raised by Ecology and Golder Associates in the January 9, 2005 Meeting Regarding the ICON Materials Water Right Application and Settlement Negotiation.

Robinson, Noble and Saltbush. May 29, 2009. Summary of Hydrogeologic Setting of the ICON Auburn Mine and Document Reference Guide to Facilitate Review of Mitigation Issues by Michael Gallagher and John Pearch.

United State Geological Survey (USGS) 1995. Occurrence and Quality of Groundwater in Southwestern King County, Washington. Water Resources Investigation Report 92-4098.

WestWater Research, LLC. December 1, 2009. Water Right Summary and Proof of Beneficial Use for Sumner Business Park Associates, LLC.

